IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18687 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAJUBHAI MURADBHAI DODIYA - Petitioner(s)
Versus
COMMISSIONER OF POLICE OF THE CITY OF SURAT & 2 - Respondent(s)

==========

Appearance :
MR SHAKEEL A QURESHI for Petitioner(s) : 1,
Mrs.Hansa Punani, Ld.AGP for Respondent(s): 1- 3.
RULE NOT RECD BACK for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 24/10/2005

ORAL JUDGMENT

1. The order of detention dated 11.08.2005 passed by the Commissioner of Police, respondent no.1 herein, detaining the detenue as “Property Grabber” as defined under Section 2(h) of the Act in exercise of powers under sub-section 1 of Section 3 of the Act as illegal and unconstitutional and violative of Articles 21 and 22 of the Constitution of India.

2. The grounds of detention, alongwith the order of detention, were supplied to the detenue on the same day revealed about the registration of solitary crime bearing I.C.R.No.134 of 2005 for the offences punishable under Sections 143, 452, 427, 387, 295, 188, 504 and 506(2) of the

Indian Penal Code. It further reveals about statements of two witnesses dated 26.07.2005, narrating about the criminal activities of the detenue, indulging into threatening witness with dire consequences, if the shop taken on rent by him is not vacated by showing weapons and indulging into fight at public place. These activities of the detenue are alleged to have been disturbed the public order and, therefore, the powers have been exercised, since other remedies were found inadequate and privilege under Section 9(2) of the Act was also claimed by not disclosing the names of the witnesses.

3. Learned advocate Shri Shakil Qureshi appearing for the detenue has challenged this order on various grounds and also the grounds raised by an amendment, incorporated to the main petition on

18.10.2005. Learned counsel for the petitioner has, however, restricted his arguments to challenge the order of detention on the ground that there is a delay on the part of respondent no.2 in considering as well as disposing and communicating the order on representation dated 29.08.2005 made by the wife of the detenue. As submitted by him, the representation dated 29.08.2005 was rejected on 30th August, 2005, however it was communicated to the petitioner detenue in the jail only on 07.09.2005 i.e. after 8 days from the date of the decision, which has resulted into right of the detenue to make effective and expeditious representation and consideration and disposal thereof by the competent authority as guaranteed under Article 22(5) of the Constitution of India. In support of his argument, he has relied upon the decision

reported in AIR 1981 SC P-1126 in the case of Harish Pahwa Vs. State of U.P. and others and also unreported decision of this Court dated 04.11.2004 in S.C.A.No.8669/2004, that in similar circumstances, there was delay about 7 days in deciding as well as communicating the decision, this Court has quashed and set aside the order of detention. He has further relied upon other submissions and grounds canvassed in the amendment application and submitted that some documentary evidence, supplied at page 45 and 46 in the compilation are not legible. He has further submitted that since the detenue is branded as “Property Grabber” and detained as such the agreement of rent is executed infavour of the complainant husband by third party and not by original land owner and in such factual back-ground, the detaining authority has failed to apply

its mind and the delay on materials have not been considered and therefore, also the order of detention stands vitiated.

Lastly a submission was made to the privilege claimed by the detaining authority under Section 9(2) of the Act is not warranted and same is wrongly claimed. Therefore, according to him, the order of detention impugned requires to be quashed and set aside.

4. Ld.A.G.P. Mrs. Hansa B. Punani has submitted that the order of detention is passed by the authority after considering the fact and relying upon the affidavit in reply. It was argued that the witnesses have given clear statements about illegal activities of the detenue as Land Grabber and being a head-strong person, witnesses have not come forward to file complaint and therefore, privilege under Section 9(2) of

the Act is rightly claimed. She has further submitted that considering the crime registered against the detenue, statements of witnesses etc., the subjective satisfaction of the detaining authority was arrived at relying upon the credible and relevant materials and therefore, the powers under Article 226 of the Constitution of India is not required to be interfered.

5. Having considered the rival submissions and on perusal of the record including the affidavit in reply, it is evident that this petition succeeds on first ground raised, as submitted by the learned advocate of the petitioner about delay in deciding the representation, delay in considering and disposing and communicating the representation of the detenue. The representation was submitted by the wife of

the detenue 29.08.2005, which was dealt with on 30.08.2005, however, the same remained un-communicated to the detenue and finally it was handed over to the detenue on 07.09.2005 in Jail by which the constitutional right as guaranteed under Article 22(5) of the Constitution of India of the detenue is clearly violated. The law laid down by the apex court in the decision reported at AIR 1981 SC 1126 and AIR 1999 SC 684, relied upon by the learned Single Judge in Special Civil Application No.8669 of 2004 dated 04.11.2004 and the decision dated 08.04.1993 passed in S.C.A.No.1785 of 1992, the judgment of the division bench of this Court also relied upon on the decision of Harish Pahwa Vs. State of U.P. and Ors. (Supra) and in the facts of that particular case when the action was not taken for two days' by the concerned authority, and particularly when the rejection of

representation which was dated 19th June, 1980 and communicated to the jail authority two days letters was considered to be vital in exercise of powers under the Act.

In view of the above decisions and the facts of the present case, no other grounds are required to be gone into since the petitioner succeeds on the above issues.

6. For the reasons mentioned above, the order of detention dated 11.08.2005 passed by the respondent no.1 herein is quashed and set aside as violative Article 22(5) of the Constitution of India since there was delay of about 8 days in communicating the decision of the representation to the detenue by the jail authority.

7. The detenue Rajubhai Muradbhai Dodiya is ordered to be set at liberty forthwith if

not required in any other offence by any other authority.

8. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

amit